

THIS DISPOSITION IS
NOT CITABLE AS PRECEDENT
OF THE TTAB

Mailed: October 13, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Brainworks, Inc.

v.

Brainworks LLC

Opposition No. 91150456

Request for Reconsideration

Gerald G. Crutsinger of Crutsinger & Booth for Brainworks, Inc.

Ken J. Pedersen of Pedersen & Company, PLLC for Brainworks LLC.

Before Simms, Chapman and Drost, Administrative Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

The Board, in its decision, dated July 12, 2004, determined certain evidentiary matters, and sustained the opposition. Applicant, on August 12, 2004 (via a certificate of mailing) timely filed a request for reconsideration.

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Applicant contends that "the Board erred in allowing the admissibility of Item 40, and, consequently, sustaining the opposition based upon Item 40 being in the record."

(Applicant's request for reconsideration, p. 2.) Applicant contends that this particular piece of evidence (a paperback book published by opposer) was the only source for evidence that opposer's services involve handling persons with ADD; and that that connection is what "drove the Board" (p. 2) to the conclusion that the parties' respective services are related. Applicant continues to assert that the book is not proper subject matter for entry into the record by way of notice of reliance and must be excluded.

We disagree with applicant that the book (Item No. 40) must be excluded. We explained in our previous decision that Item Nos. 39 and 40 (each a paperback book published by opposer) were admissible under Trademark Rule 2.122(e) as printed publications; and we explained that they were admissible only for what they show on their face. (See the July 12, 2004 Board order, p. 5.)

In any event, it is clear throughout our July 12, 2004 decision that Item No. 40 was neither the sole basis for our factual finding regarding the parties' respective services, nor for our legal finding of a likelihood of confusion.

We have carefully reviewed this matter, and inasmuch as the Board finds no error in our July 12, 2004 decision,

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applicant's request for reconsideration is denied. The decision previously issued by the Board stands; and the opposition is sustained.